the receipt may, upon pledge to him, be treated as a purchaser or holder. The latter point has not previously been decided; but on analogy to the later and better view regarding a similar situation in the law of bills and notes, the warehouseman might well have been treated as any other purchaser, and hence protected. See *Morley* v. *Culverwell*, 7 Mees. & W. 174; *National Bank* v. *Lindsay*, 2 Boyce (Del.), 83, 78 Atl. 407; *Horn* v. *Nicholas*, 138 Tenn. 453, 201 S. W. 756. The court, however, merely treated the whole transaction as, in total effect, a pledge of the goods. Such reasoning, while perhaps sufficient to reach correct results in some cases, is technically inaccurate and is likely to produce results seriously in conflict with commercial usage and understanding.

BOOK REVIEWS

TRACTATUS DE BELLO, DE REPRESALIIS ET DE DUELLO. By Giovanni da Legnano. Edited by Thomas Erskine Holland. Washington: The Carnegie Institution. 1917. pp. xxxviii, 458.

DE INDIS ET DE JURE BELLI RELECTIONES. By Franciscus de Victoria. Edited by Ernest Nys. Washington: The Carnegie Institution. 1917. pp. 475.

DE JURE ET OFFICIIS BELLICIS ET DISCIPLINA MILITARI LIBRI III. By Balthazar Ayala. Edited by John Westlake. Washington: The Carnegie Institution. 1912. 2 vols. pp. xliv, 227; xii, 250.

These volumes belong to the series entitled "Classics of International Law." The general editor is Dr. James Brown Scott, Secretary of the Carnegie Endowment for International Peace. In each instance the reader is furnished with a facsimile of an early and trustworthy text, a translation into English, and an introduction by a special editor. The result is a firm foundation for scholarly investigation. The series is not yet complete, but it already contains so many volumes that comparison of one volume with another throws much light on the history of international doctrine.

The three authors named above antedate Grotius, and consequently are ancient from the point of view of international lawyers. It is true, to be sure that, as international law is simply a collection of the rules observed, or at least supposed to be observed, by states in their relations with each other, there was some sort of international law as soon as there were two states. It is true also that occasional statements regarding international practices are found in the Bible, in the Greek classics, and in the Latin classics. (1 OPPENHEIM'S INTERNATIONAL LAW, 3d ed., §§ 37–40.) Yet for thousands of years international law was not treated as a separate branch of knowledge. Its problems were commingled with those of government, ethics, and theology. In the middle ages there was abundant reason for such confusion; for the Church was the center of almost all learning, and, besides, the Church believed itself to have the right and the duty to control the State or at least to advise and reprimand the State's rulers. Thus the *Decretum* of Gratian, dating from between 1139 and 1150, and soon afterwards to be embodied in the *Corpus Juris Canonici*, gives in *Causa XXIII* of its second part a discussion of war, and more particularly of private war, the mediaeval link between the ancient blood feud and the vendettas still found in a few mountainous regions. So too the *Summa Totius Theologiae* of St. Thomas Aquinas, dating from between 1265 and 1274, has something to say on the same subject in the fortieth question discussed in the *Secunda Secundae*. The consequence is that the general editor of a series of classics of international law encounters difficulties. What is he to do with books devoted principally to subjects other than

international law? Is he to present extracts from the Bible and other sources such as those to which allusion has just now been made? As yet the general editor of this series has reprinted only works dealing with international law exclusively, or at least largely.

The nature of these volumes, as well as their relation to one another and to the development of international law, cannot be fully discovered without careful study; but a short statement regarding each author will serve to show that careful study will be well worth while.

In 1360 Giovanni da Legnano, then Professor of Civil Law in the University of Bologna, and later Professor of Canon Law, wrote the work entitled "*Tractatus De Bello, De Represaliis, et De Duello.*" He was active in the public affairs of Bologna, and this work grew out of the local wars and was addressed to the leader of one of the factions.

Legnano begins with scriptural and astrological matter, but soon passes to topics more intelligible to-day. He deals largely with questions of military policy and discipline, *e. g.*, "Of the legion and the cohort, and who and how many are required therein," "How soldiers should conduct themselves in war, whom they should obey, and from what they are commanded to abstain," "What belongs to the office of a general in war," "How soldiers are punished differently, according to their different offenses." The author also deals with questions of government and constitutional law, *e. g.*, "Whether war made by the Emperor against the Church is lawful, and whether subjects are bound to obey him therein," "Whether vassals are bound to participate at their own expense, when a lawful war is begun by their lord," "Whether subjects are bound to help first a baron who begins a war against another baron, or the king who begins a war against another king, both commands being received at the same time," "Whether the non-liege vassal of two lords, summoned by both at the same time, is bound to help both, or one, and if so, which," "Whether a citizen of two states is bound to help one against the other," "Whether a vassal summoned by his lord is bound to follow him in parts beyond the sea to fight against barbarians." Perhaps no lesson taught by examining the book is more valuable than the knowledge that international law has been, and inevitably must be, interwoven with ethics, government, and military discipline. Among the topics which to-day might be dealt with in books on international law are these: "How universal corporeal war had its origin in the law of nations," "Who, first and chiefly, may declare universal war, and by what law, and against whom," "Whether quarter should be granted to the general of a war when captured," "Whether one who makes a capture in war becomes owner of the person or thing captured, and whether the doctrine of '*postliminium*' applies," "Whether persons captured in a war between two states become slaves," "Whether things captured in war become the property of the captors," "Whether trickery is allowed in wars," "Whether mercy should be shown to persons captured in a lawful war," "Whether those who attend in a war, but who cannot fight, enjoy the immunities of combatants." Those are nearly all the passages now interesting from the point of view of international law; but it is possible that some specialists in the history of the subject will care to follow in other passages the discussion of lawful and unlawful war, and of the distinction between universal and particular war, and of private reprisal; for just wars and private warfare played a large part in the early literature. Finally, the general history of law gains a valuable sidelight from the discussion of the duel as an incident of compurgation and of trial by combat (chapters clxx, clxxi, clxxv-cxciv).

The present edition leaves nothing to be desired. A nearly contemporaneous manuscript is presented in collotype. As the manuscript abounds in abbreviations and other difficulties, the original Latin is then presented in full. There is then a translation. There is also a facsimile of the edition of 1477.

The introduction by Sir T. E. Holland, formerly Professor of International Law in the University of Oxford, shows how the work originated and gives incidental insight into the varied life led by a law professor five hundred years ago. There is even a photograph of Legnano's tomb, one of those Bolognese tombs decorated with a representation of students and lecture room, perhaps in this instance the very lecture room bought by this professor from the estate of his predecessor (p. xiii).

Franciscus de Victoria was a Spaniard of the Dominican order, educated at the University of Paris, and from 1526 to 1546 Professor of Theology in the University of Salamanca. His dissertations *De Indis* and *De Jure Belli* were delivered in 1532. They were not printed until after his death. Their general subject is the justification for Spanish domination in America.

Some of the topics are "Whether the Indian aborigines before the arrival of the Spaniards were true owners in public and in private law," "Whether there were among them any true princes," "Whether heresy causes loss of ownership by human law," "Barbarians are not precluded by the sin of unbelief or by any other mortal sins from being true owners alike in public and in private law," "The Emperor is not the lord of the whole world," "Even if the Emperor were the lord of the world, that would not entitle him to seize the provinces of the Indian aborigines," "A refusal by these aborigines to recognize any dominion of the Pope is no reason for making war on them and for seizing their goods," "The Spaniards have a right to travel to the lands of the Indians and to sojourn there so long as they do no harm," "Any children born to Spanish parents domiciled in those parts who wish to become citizens thereof cannot be excluded from citizenship," "When and in what case the Spaniards can resort to severe measures against the Indians, treating them as faithless foes, and employ all the rights of war against them and take away their property and even reduce them to captivity," "Whether the Spaniards could have reduced the Indians into their power, if it were certainly clear that they were of defective intelligence," "Christians may serve in war and make war," "In whose hands lies the authority to make or declare war," "Anyone, even a private person, can accept and wage a defensive war," "What a State is, and who is properly styled a prince," "Petty rulers or princes, who are not at the head of a complete State, but are parts of another State, cannot undertake or make war," "And what about cities," "What can be a reason or cause of just war," "Proof that diversity of religion is not a just cause of war," "Extension of an empire is not a just cause of war," "The personal glory, or other advantage of a prince, is not a just cause of war," "Wrong done is the sole and only just cause for making war," "In just war it is lawful to make good, out of the goods of the enemy, all the cost of the war and all damages wrongfully caused by the enemy," "Whether it is lawful in war to kill the innocent," "Whether it is lawful to kill women and children in a war against the Turks, and what, among Christians, about farmers, civilians, foreigners, strangers, and clergy," "Whether it is lawful to kill captives and those who have been surrendered," "Whether things captured in a just war belong to the captor," "Whether it is lawful to leave a city to the soldiery by way of booty; and how this is not unlawful, but at times even necessary," "Soldiers may not loot or burn without authority," "Whether it is lawful to impose the payment of tribute on the conquered enemy," "Whether it is lawful to depose the princes of the enemy."

That is a long list of interesting topics; and to show the modernness of Victoria's spirit, it is worth while to quote the greater part of his summary of the rules of warfare: "First canon: Assuming that a prince has authority to make war, he should first of all not go seeking occasions and causes of war, but should, if possible, live in peace with all men. . . . Second canon: When war for a just cause has broken out, it must not be waged so as to ruin the

people against whom it is directed, but only so as to obtain one's rights and the defense of one's country and in order that from that war peace and security may in time result. Third canon: When victory is won and the war is over, the victory should be utilized with moderation and Christian humility, and the victor ought to deem that he is sitting as judge between two States, the one which has been wronged and the one which has done the wrong, so that it will be as judge and not as accuser that he will deliver the judgment whereby the injured State can obtain satisfaction, and this, so far as possible, should involve the offending State in the least degree of calamity and misfortune, the offending individuals being chastised within lawful limits; and an especial reason for this is that in general among Christians all the fault is to be laid at the door of their princes, for subjects when fighting for their princes act in good faith."

The introduction is by Ernest Nys, Professor of International Law in the University of Brussels. It gives, among other valuable matter, an account of the rise of the literature of international law in the middle ages; and this account is so thorough and so interesting that no one of scholarly tastes, whether acquainted with international law or not, can fail to be charmed with it.

Balthazar de Ayala was born at Antwerp in 1548. He was of Spanish descent. He became a licentiate in law at the University of Louvain. At the age of thirty-two he became military judge and judicial advisor in the Netherlands military service. In other words, he became judge advocate general. In 1581 he produced, apparently upon the basis of notes made before he entered into office, his treatise *De Jure et Officiis Bellicis et Disciplina Militari. Libri III.* The first of the three books deals with topics distinctly related to international law, and among others the following: "Of the method of declaring war," "Of just war and just causes of war," "Of the duel or single combat," "Of hostage-seizing, commonly called reprisals," "Of capture in war and the law of postliminy," "Of keeping faith with an enemy," "Of treaties and truces," "Of trickeries and deceit in war," "Of the law of ambassadors." The second book is devoted chiefly to military policy, for example, to discussing whether it is better to await war at home or to carry it into the enemy's territory; and this second book contains at least two topics of interest to the student of international law, namely: "In time of victory the first and chief thought must be about peace," and "After enemies have been crushed, what is the best method for keeping them quiet in a lasting peace." The third book is devoted to military discipline, and contains nothing of interest regarding international law; but any one studying the early history of military law will wish to examine the chapters dealing with military courts and the privileges and punishments of soldiers.

In the introduction, the late Professor Westlake, of the University of Cambridge, states the doctrines elaborated in the text and describes the author's position in the history of the subject.

Surely any one who has read the lists of topics selected from these sumptuous volumes has perceived opportunities to gain the keen mental pleasure of searching for origins and of tracing thoughts and words from the first source through the later writers. For example, does Ayala hark back to Victoria, to Legnano, to St. Thomas Aquinas, to Gratian, to the *Corpus Juris Civilis*, to the Latin classics, to the Greek classics, to the Bible? There are men who can spend a lifetime thus. In the case of international law a scholar need not feel that such a search is wholly useless; for there is practical value in demonstrating that a suggestion or international doctrine is new or old. There is a presumption against what has been suggested and tried and rejected. There is a presumption in favor of what has been long approved. Such at least is the view of statesmen. Hence just now, when the world needs readjusting, and theories on international law are to play a greater part than heretofore,

any classics of international law have interest and importance both for the scholar and for the practical man whose career lies neither in the study nor in the lecture room.

EUGENE WAMBAUGH.

THE PEACE NEGOTIATIONS. A PERSONAL NARRATIVE. By Robert Lansing. Boston and New York: Houghton Mifflin Company. 1921. pp. vi, 328.

This book is not what its title would seem to indicate, — a history of the Peace Conference at Paris. It is rather a record of the differences of opinion and the progressive estrangement which arose between President Wilson and his Secretary of State in connection with the peace negotiations and which led to Mr. Lansing's forced resignation a year later. The author writes with the moderation and dignity that were to be expected of him, paying not a few tributes to the high qualities of his former chief and offering adverse criticism of him with many hesitations and qualifications. Nevertheless, this is an *ex parte* statement, the proper evaluation of which is difficult until the case for the other side has also been heard.

In order to explain why he deemed it proper to publish such a book at such a time, Mr. Lansing cites the well-known correspondence between Mr. Wilson and himself of February, 1920, in which the President referred to the Secretary's obvious "reluctance" to accept his "guidance and direction," and declared that it would relieve him of embarrassment if Mr. Lansing would resign and afford him an opportunity to select some one "whose mind would more willingly go along with mine." In these words the author sees "the manifest imputation . . . that I had advised him wrongly and that, after he had decided to adopt a course contrary to my advice, I had continued to oppose his views and had with reluctance obeyed his instructions." It was in order to clear himself from this intolerable "imputation . . . of faithlessness and of a secret, if not open, avoidance of duty," that this book was published. Such reasons for writing do not seem very cogent. From an impartial reading of the letter in question, it is difficult to see that any such imputation was implied; and had it been, the present volume would not do much to refute it, for it throws little light upon how Mr. Lansing discharged his duties except in regard to the advice he tendered the President. The one thing it does prove is the reluctance of the former Secretary to accept the President's policies, that reluctance to which Mr. Wilson alluded and which Mr. Lansing himself does not in the least deny. "I followed his directions . . . with extreme reluctance, because I felt that President Wilson's policies were fundamentally wrong" — this is, indeed, the constant refrain of the book. It is in the exposition of these differences of opinion and of the reasons for them that the whole value of the volume lies.

Our two leading representatives at Paris differed continually, and on the most important questions. Mr. Lansing was opposed to the President's going to Paris, in the first place, to his personal participation in the Conference after he had got there, and to his whole method of conducting the negotiations. He regarded national self-determination — the principle on which most of the territorial work of the Peace Conference was based — as a "phrase . . . loaded with dynamite," and remarks, "What a calamity that the phrase was ever uttered!" He condemned the President's yielding in the Shantung affair. He deplored the alliance treaty with France, to which he affixed his signature. Above all, he opposed and long struggled against the plans, not indeed for an association of nations, but for *the* particular League of Nations on which, more than on any other object, the President's mind was bent. In every case his advice was disregarded, sometimes not quite courteously, he